

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **CHAIRMAN ARNIE MOHL**, on February 13, 2001 at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Sam Kitzenberg (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Glenn Roush (D)

Members Excused: None.

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 348, 1/29/2001; SB 358,
2/5/2001; SJ 11, 2/2/2001
Executive Action: SJ 11; SB 358; SB 348

HEARING ON SB 348

Sponsor: SEN. JIM ELLIOTT, SD 36, TROUT CREEK

Proponents: **Dr. Raymond Nelson, self**
 Mike Kadas, Mayor, City of Missoula
 Vern Jones, self
 Pat Keim, Burlington Northern & Santa Fe Railroad
 Russ Ritter, Montana Rail Link
 Craig Gilchrist, Engineer, BLE MT SLB
 Jani McCall, City of Billings
 Gray Shanks, Havre, self

Opponents: **John C Hoyt, self**
 Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

SEN. JIM ELLIOTT, SD 36, TROUT CREEK, opened by saying that the purpose of SB 348 was three-fold: first, it dealt with noise pollution by allowing cities and towns to petition the United States Department of Transportation to establish quiet zones at railroad crossings. Second, it required train horns to be sounded only at public crossings which would change Montana law to conform to laws in surrounding states. He then handed out **EXHIBIT(his36a01)** and **EXHIBIT(his36a02)**, one being an advertisement and the other petitions from several county commissioners and townships. He pointed to the old law which said, on page 3, line 6 : "any highway, road or railroad crossing", and the proposed law which strikes "any" and inserts "public". Lastly, it cleans up some of the archaic language of the statute.

Proponents' Testimony:

Dr. Raymond Nelson, self, stated that the idea of this proposal began with the idea of tranquility but soon became one of safety. He told of his community nestled in the corridor between Thompson Falls and Plains, with the highway, the Clark Fork, and the railroad winding through the middle of it, and 2,000 foot cliffs on either side. About 18 months ago, he noticed a marked increase in train horns blowing around the clock. He did some inquiries and found out that Montana was out of sync with practices in surrounding states where trains do not sound horns or whistles at private crossings. Then-governor Racicot informed him of pending federal rules which came about as the result of legislation passed by Congress in 1994, due to accidents in Florida. This legislation directed the FRA to come up with measures that increased safety and achieved silence. It was discovered through an environmental impact statement that a few

simple changes to railroad crossings greatly outweigh the sound of the horns. He referred to a study done in Spokane, WA, and offered **EXHIBIT(his36a03)** which also describes some of these changes. He summarized their findings and said there were 14 times more crossing incidents with the horns sounding than with the median barrier in place and no horns. In closing, he referred to additional statistics found in the study.

Mike Kadas, Mayor, City of Missoula, told of two railroad crossings in his community where people had requested to find a solution so the train whistles did not have to be sounded, and said this bill gave them that opportunity. He mentioned the installation of median barriers as a way to address the safety issue.

Vern Jones, self, stated that, before retiring, he worked for the rail-highway safety program and thus had some knowledge of the issues at hand. He offered written testimony **EXHIBIT(his36a04)**. He went on to say that the Federal Railroad Authority postponed working on these regulations until May, and some states had expressed interest in getting this under their control. He stated that because of this, he was concerned with Montana passing this bill before anyone knew what the FRA would do since SB 348 said it would follow the FRA regulations. He offered one more reason for the quiet zones, that being the block signal system. When a train enters a certain block, the signal is activated. This works for an Amtrak train traveling at 79 mph; when a train travels at half that speed, the signal is activated when it enters that block and stays on for twice as long as it should be until the train gets there, prompting people to drive around the barriers.

Pat Keim, Burlington Northern & Santa Fe Railroad, offered **EXHIBIT(his36a05)**, his written testimony, and **EXHIBIT(his36a06)**, a fact sheet.

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Russ Ritter, Montana Rail Link, rose in support of SB 348 for the same reasons and added that if he could, he would close all private railroad crossings because of the safety issues involved. He went on to say how impressed he was with the obvious concern for safety that railroad employees exhibited, when, a number of years ago, he was a newcomer to the railroad company. He recounted witnessing a vehicle accident at a railroad crossing and said this was not only traumatic to the victims' families but also to the engineer and the brakeman. In closing, he stressed that his company did everything possible to make their employees conscious of safety and repeated he fully supported SB 348, with the conditions outlined by **Mr. Keim**.

Craig Gilchrist, Chairman, State Legislative Board of the Brotherhood of Local Engineers, said that SB 348 provides the public with the necessary measures of safety to interact with on track railroad equipment.

Jani McCall, City of Billings, also rose in support of SB 348 and commended the sponsor for bringing this bill forward, saying all the components are covered in this bill to make sure everyone is protected, and safety is increased.

Gary Shanks, Havre, self, talked about a private railroad crossing adjacent to his property where the sound of the whistles had become intolerable to the point where he saw moving as his only way to escape it. He complained that he could not entertain outside, like having a backyard barbecue, and his grandchildren run into the house whenever they hear the train approaching, and said he was wholeheartedly in favor of SB 348.

Opponents' Testimony:

John Hoyt, Lawyer, self, said his law practice has been principally investigating accidents at railroad crossings for the last 25 years. He stated he could not support the second part of the proposed bill which permits trains to go through private crossings without sounding their horns. He cited statistics from Florida that show accidents increased threefold during the period in which the state's whistle ban was in effect. Another study in Oregon showed virtually the same results. In his opinion, this puts the onus on the driver; he has to be aware of the oncoming train and estimate when it will arrive at the crossing. He explained that this is not always possible, pointing to road curvatures, banks, weather and lighting conditions, or even railcars parked on the tracks. He stated that the FRA's conclusion was that the ban of whistles at crossings entailed a much higher safety risk because it gave a driver no indication of an approaching train. He related an incident where a man was killed when his car was hit by a train at a private crossing near his home. He could not see the oncoming train due to railcars parked on a siding, about 200 feet down from the crossing. He maintained that had the horn been sounded properly, this man would have lived.

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He stated that the BNSF had instructed their engineers about a year ago to sound their horns at private crossings but had not erected whistle boards to tell them where to sound the horns. He was concerned with the large number of private crossings with heavy vehicle traffic, such as access to logging operations, recreational sites, grain elevators and so on. He said sometimes it was hard to tell a private crossing from a public

one, and the issue was not tranquility but life or death. To illustrate his point, he handed out **EXHIBIT (his36a07)**. He repeated that the premise of this bill was unsafe, and urged the committee not to pass it.

Al Smith, Montana Trial Lawyers' Association, said that when the FRA looks at the safety of quiet zones, they do not include private crossings because there are no requirement for alternative warnings with regards to private crossings. This means that there is nothing the FRA will do to make sure those private crossings remain safe, and that is the reason for section (4) SB 348. He wondered whether a homeowner would be liable if a delivery van was hit at his private crossing, or who would be liable in the event of a derailment at the private crossing. He addressed the four conditions **Mr. Keim** talked about, and said there is no FRA approval for private crossings; there is no requirement for equipped private crossings; there is nothing that will spur on law enforcement; and the fourth condition was that of immunity which is a provision of the bill. He summarized that three out of four factors were missing and urged to either table the bill or eliminate the private crossing section.

Questions from Committee Members and Responses:

VICE CHAIRMAN RIC HOLDEN referred to the noise complaints and asked what had triggered the increased sounding of the horns. **Mr. Gilchrist** stated that as employees of the railroad companies, they were instructed to sound the horns at all crossings. **VICE CHAIRMAN HOLDEN** wondered about the rationale behind that, and **Mr. Gilchrist** answered he did not know. **VICE CHAIRMAN HOLDEN** then asked if he questioned the validity of the instructions. **Mr. Gilchrist** said they asked why and were told it was the law. The Federal Railroad Administration mandates that operating crews be tested for efficiency in the rules for actual in-field scenarios, and that includes the proper sounding of the horns. **VICE CHAIRMAN HOLDEN** then asked **Mr. Keim** what increased the frequency of the horn usage since it had always been in the statutes. **Mr. Keim** assumed he was referring to the horns sounded at private crossings because the whistles had always been blown at public crossings, and over the years the rules had evolved to whistle until the train was through the crossing. It also became the understanding that the law applied to private crossings, even though a recent district court ruling said Montana statute referred to public crossings only. He said this ruling is still under appeal, and, faced with this uncertainty, the railroads decided to start sounding the whistles at all crossings which accounted for the increase. **VICE CHAIRMAN HOLDEN** stated the increase then was really caused by the number of lawsuits the

railroad was involved in. **Mr. Keim** confirmed that it was a lawsuit which brought up this issue.

Closing by Sponsor:

SEN. ELLIOTT closed by saying many of his constituents had requested this bill. He acknowledged that to a degree, this was a question of public inconvenience versus public safety.

HEARING ON SB 358

Sponsor: **SEN. ROBERT DEPRATU, SD 40, WHITEFISH**

Proponents: **Tom Harrison, R. L. Polk Co.**

Opponents: **None**

Opening Statement by Sponsor:

SEN. ROBERT DEPRATU, SD 40, opened by saying that the purpose of SB 358 was to give the public the opportunity to have access to records regarding vehicles that have been in accidents. In short, it enables people to find out the history of a vehicle before they purchase it. There is a privacy clause within the bill which prevents the department from disclosing the name, telephone number, address, or any other information of the involved parties.

Proponents' Testimony:

Tom Harrison, R. L. Polk Co., explained that his company gathers information data relative to the automobile industry, and works mainly on-line under the name of Carfax. Through this service, and for a fee, auto dealers as well as the public can determine whether the vehicle they plan on purchasing has a salvaged title, whether there is odometer fraud or a washed title. The latter refers to manufactured buy back programs of "lemons", cars with flood, fire, or accident damage that is being concealed. The Polk Company compiles this data on every car and every VIN number in this country. He stated that this bill would assure them access to this information in Montana, and its safeguards preserved the confidentiality of the people involved. He pointed out that the Motor Vehicle Department used to sell this information which is now determined to be confidential, giving peripheral industries the opportunity to besiege the car buyer with offers to buy accessories for the new car. He

repeated that SB 358 was a consumer protection bill which would help auto dealers and reduce lawsuits.

Questions from Committee Members and Responses:

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SEN. JERRY O'NEIL asked if there would be a fiscal impact with setting up the computers to make this information available. **Mr. Harrison** said he was not sure. He repeated that his company gets this information, compiles and re-sells it, but that a lot of others benefit from it, such as other companies as well as auto dealers. He suggested it might provide jobs to two part-time employees at the most. **SEN. O'NEIL** then asked about the cost for this service, and **Mr. Harrison** replied it was \$29.95 to his knowledge. **SEN. O'NEIL** asked whether other states based their fees on a per inquiry basis, and whether this bill allowed Montana to charge a fee. **SEN. ROBERT DEPRATU** answered he did not believe that it either allowed for it nor disallowed it. **SEN. O'NEIL** inquired whether this information was readily available or would computers have to be re-programmed. **SEN. DEPRATU** replied that it was readily available. **SEN. DAN HARRINGTON** stated that sometimes, insurance companies will total a car, have it repaired and the re-sell it, and he wondered if **Mr. Harrison** was talking about that type of practice. **Mr. Harrison** affirmed this, and **SEN. HARRINGTON** wondered if there was any way those cars could be designated. **Mr. Harrison** said that they are designated when they are totaled and get a salvage title. The problem is, though, that this is not conveyed to the consumer buying that vehicle until after the fact because a person selling a damaged car knowingly will deliver the title after the transaction. With Carfax, the buyer is able to look up the vehicle in question, and he will know its history. **SEN. HARRINGTON** then asked if this applied to cars that are "lemons". **Mr. Harrison** replied that it did. He then added that trade-in dates as well as the odometer reading on the date of exchange are recorded in this data. **CHAIRMAN ARNIE MOHL** asked if the sponsor could get the fiscal note drafted before the floor session, and **SEN. DEPRATU** assured him he would even though he did not think it would show any significant amount of money. **CHAIRMAN MOHL** inquired who paid insurance companies for keeping these records. **SEN. DEPRATU** answered that nobody paid the insurance companies. This information is passed on to the data base at Deer Lodge as title exchanges take place. He reiterated that when a vehicle is totaled and the insurance company buys it, they have to declare that fact when they sell it, and a salvage or marked title is issued. **CHAIRMAN MOHL** then asked if this would create additional staffing for the Motor Vehicle Division. **SEN. DEPRATU** felt it would not since all this data is put into the computer base as titles are exchanged.

Closing by Sponsor:

SEN. DEPRATU closed on SB 358.

HEARING ON SJ 11

Sponsor: SEN. JON TESTER, SD 45, BIG SANDY

Proponents: Barry "Spook" Stang, Montana Motor Carriers' Assn.
Dave Galt, Montana Department of Transportation
Curtis Kuehn, Timberweld Manufacturing
Lorna Karn, Montana Farm Bureau

Opponents: None

Opening Statement by Sponsor:

SEN. JON TESTER, SD 45, opened by saying that SJ 11 addresses the section in the new rules set by the Federal Motor Carriers Safety Administration which proposes elimination of the exemptions for the logging and agricultural industries. It will provide the needed flexibility and promote safety on the highways. Within the resolution, it says that the Montana Legislature opposes the new rules regarding the hours of service regulations, and asks that a new proposal be issued based on sound science, that it enhances public safety, and strengthens the ability of the trucking industry to meet the needs of the American economy.

Proponents' Testimony:

Barry "Spook" Stang, Montana Motor Carriers' Association, offered written testimony **EXHIBIT**(his36a08) and **EXHIBIT**(his36a09) and stated he was also speaking for **Ronna Christman, Montana Petroleum Marketers Assn.**, who had signed in but was unavailable at this point.

Dave Galt, Montana Department of Transportation, agreed that there were serious shortcomings in the administration's new rules, and he referred to **Frank Murphy, Motor Carrier Services Division**, who was very familiar with these rules and would be available to answer any questions. He concurred that a clear message should be sent to Congress that these proposed new rules, which the new administration had put on hold, were flawed.

Curtis Kuehn, Traffic Transportation Manager, Timberweld

Manufacturing, said his company is a small plant in Columbus which has manufactured laminated wood beams for 44 years and ships its product all over the U.S. He stated that the proposed hours of service regulation failed to consider the economic impact it would have on many small businesses. It threatened the future of his company and the livelihood of its employees by taking away its ability to compete in the marketplace. It will cut the driver's hours per work week, and put more trucks on the road to make up the lost delivery hours.

Lorna Karn, Montana Farm Bureau Federation, stated that her organization had previously been exempted but now was facing the same regulations, and she wondered whether this would also affect farmers who were hauling their own livestock. She feared it was going to cause a lot of hardship for the farmers and ranchers, and urged support for the resolution.

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked what a "circadian cycle" was. **Mr. Stang** replied it had to do with sleep habits. **VICE CHAIRMAN HOLDEN** wanted to know what the practical application of the rules was as they applied to agriculture. **Frank Murphy** explained that there were two different types of operations relating to the farming community: one dealt with intra-state operations which are unregulated as far as the hours of service are concerned; the other one applies to interstate operations, and they fall under the same regulations as the commercial trucking industry. **VICE CHAIRMAN HOLDEN** inquired how this would affect his own ranching operation if they, for instance, had to transport a truckload of lambs to another state. **Mr. Murphy** replied that this would fall under the commercial haulers' rules of 10 hours of driving followed by an eight-hour layover, provided the vehicle had a gross weight rating of more than 10,000 pounds. **VICE CHAIRMAN HOLDEN** wanted confirmation that the driver had to stop after 10 hours, and **Mr. Murphy** affirmed that. **VICE CHAIRMAN HOLDEN** pointed out that this would not work because the lambs would not survive such long hours in a truck and asked who approved those rules. **Mr. Murphy answered** that it had always been a federal regulation with regards to commerce between states. He explained that this was the reason why a lot of companies had adopted the two-driver system, so they could continue on with their load. **VICE CHAIRMAN HOLDEN** asked the same questions of **Mr. Stang** who pointed to the fact sheet in Exhibit (8) and explained that under current rules, one could work for 15 hours in which to load and/or unload a truck but drive no more than ten. Under the proposed rules, one can only work 12 hours a day which has to include the loading and unloading of goods. He also pointed to

the proposed mandatory 48-hour layover at the end of the work week. **CHAIRMAN ARNIE MOHL** wondered how this compared to other states, and **Mr. Stang** replied that the rules are federal rules and apply to every state. The only exception was that Montana gave intra-state haulers a break, but he feared we could lose that under the proposed new rules.

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Closing by Sponsor:

SEN. TESTER closed on SJ 11 and reiterated that currently, if someone was hauling within a 100-mile radius, he would not have to fill out a log book or worry how long it took to load the truck or how long he had been on the road, but with the new rules, he would lose these exemptions. He quoted **Mr. Galt** by saying these proposed new rules went past what good government is supposed to do, and urged support for SJ 11.

EXECUTIVE ACTION ON SJ 11

Motion/Vote: **SEN. DEPRATU** moved that **SJ 11 BE ADOPTED**. Motion carried 10-0.

EXECUTIVE ACTION ON SB 358

SEN. DEPRATU called for a vote on SB 358.

Discussion:

VICE CHAIRMAN HOLDEN stated he would like to include an amendment to the bill, and referred to line 21 "...the report and supplemental information ... filed by law enforcement personnel" where he would insert "including witness statements" after "supplemental information". He felt that a lot of times, that information was not included in the police report. **SEN. DEPRATU** asked whether he wanted the names of the witnesses released or just the statement, and **VICE CHAIRMAN HOLDEN** replied just the statement; the names were covered in Section(e) and their privacy guaranteed. **SEN. COCCHIARELLA** wondered whether this should also be inserted on page 2, line 3. **Connie Erickson** answered that it could be inserted for additional clarification. **VICE CHAIRMAN HOLDEN** was agreeable to the suggestion. **SEN. DAN HARRINGTON** wondered if a witness statement would not automatically be part

of the "supplemental information". **VICE CHAIRMAN HOLDEN** said one would think so, but more often than not, these would not be included. **SEN. DEPRATU** accepted the proposed amendment to his bill, saying it did offer clarification.

Motion/Vote: **SEN. HOLDEN** moved that **AMENDMENT TO SB 358 BE ADOPTED**. **Motion carried 10-0.**

SEN. GLENN ROUSH wondered if all these requests would entail additional cost to the department, and said he would like to see a fiscal note for this bill. **VICE CHAIRMAN HOLDEN** explained that the department already had all this information. When an insurance company settles a claim on a totaled car, they send a flyer to the department stating that fact, and that note gets entered into the computer and attaches to the title. That title then is restricted, alerting the prospective buyer to that fact. **SEN. DEPRATU** wanted to address the consumer protection issue in the bill and added that oftentimes it is a late model car, still under warranty, that is totaled. A restricted title automatically voids the warranty, so it really is in the consumer's best interest to be able to get information on the history of the car. **CHAIRMAN MOHL** also requested a fiscal note, and the sponsor said he would oblige but repeated he did not think there would be any fiscal impact. **SEN. O'NEIL** stated that he had, in the past, requested information from the department, and he seemed to remember that he was charged for this service. In view of this, he wondered if it would not be a positive fiscal note.

Motion/Vote: **SEN. MOHL** moved that **SB 358 DO PASS AS AMENDED**. **Motion carried 10-0.**

Amendment #SB035801.ace **EXHIBIT**(his36a10) was handed in 2/16, due to the computer problems.

EXECUTIVE ACTION ON SB 348

Motion: **SEN. DEPRATU** moved that **SB 348 DO PASS**.

Discussion:

SEN. DEPRATU felt we should bring our statutes in line with those of other states. **SEN. O'NEIL** liked the bill for advocating local control. **VICE CHAIRMAN HOLDEN** took issue with the immunity clause in the bill, saying this let the railroads off the hook in case of an accident. The way it is now, the blowing of the horn can become a critical part of the accident if there is a lawsuit. He mentioned a rancher friend who lived near railroad tracks, with his house on one side and the barn on the other, and this friend told him he would rather put up with the noise of the

horns, reminding him of the crossing, than become lackadaisical due to the frequency with which he crossed the tracks. **SEN. O'NEIL** wondered if this bill would exempt private crossings whether the locality requested that or not, and suggested an amendment to enable localities to have their say. **SEN. ROUSH** said he shared the same concern with **VICE CHAIRMAN HOLDEN** regarding the immunity clause. He said that oftentimes, a second track will have railcars on it and can blind-side a driver, and he maintained the whistles served a purpose in warning the drivers. **SEN. DALE BERRY** voiced the same concerns. **Substitute Motion:** **SEN. O'NEIL** made a substitute motion that **AMENDMENT TO SB 348 BE ADOPTED.**

Discussion:

Connie Erickson stated that there were two parts to the bill: one allows local government to establish a quiet zone, and the other says the trains do not have to blow the horn at private crossings. **SEN. O'NEIL** then said the amendment should say that the localities need to petition the federal government before the private crossings are exempted. **Connie Erickson** asked that voting on the bill be delayed until she had a chance to research and draft the amendment. **VICE CHAIRMAN O'NEIL** said the committee should first see if the amendment would be adopted. **SEN. HARRINGTON** inquired how the engineers would know if a crossing is a private crossing, and where he needed to blow the horn. **SEN. DEPRATU** felt that individuals have an obligation to be aware of their surroundings. He further stated that people who build or buy houses near railroad tracks know what they are facing. **Vote:** Substitute motion that **AMENDMENT TO SB 348 BE ADOPTED failed 1-9 with O'Neil voting aye.** **SEN. GERALD PEASE** stated he could not support this bill and indicated he would like to table it. **Substitute Motion/Vote:** **SEN. PEASE** made a substitute motion that **SB 348 BE TABLED. Substitute motion passed 8-2 with Cocchiarella and DePratu voting aye.**

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. ARNIE MOHL, Chairman

MARION MOOD, Secretary

AM/MM

EXHIBIT (his36aad)